

1 2004 contract with my client. Have I got it
2 right?

3 A No, I was the senior lawyer -- I
4 was a senior employee who also was a lawyer
5 having discussions with the man who was acting
6 as counsel in direct discussions with your
7 client. That's correct.

8 Q I don't want to believe this, but
9 you also claimed privilege over communications
10 with non lawyers at the NFL for the 2004
11 contract negotiations, correct?

12 A I don't know.

13 Q You don't remember at your
14 deposition refusing to answer questions about
15 conversations with Mr. Shaw who is not a
16 lawyer.

17 A I remember at my deposition not
18 answering questions based on privileged
19 grounds when instructed not to answer by my
20 client.

21 Q Okay.

22 A Or by my counsel.

1 Q So you weren't getting legal
2 advice from a non lawyer, Mr. Watkins. You
3 must have been given some legal advice to Mr.
4 Shaw if you're claiming privilege over that.

5 A I would say two things, Mr.
6 Carroll. No. 1, I don't recall ever having a
7 one-on-one conversation with Mr. Shaw. I
8 recall having conversations in which Mr. White
9 who clearly was acting as counsel was involved
10 and No. 2, I'm a lawyer by training. Even if
11 I give business advice, it's always going to
12 be informed by legal judgment.

13 Q Now am I correct that in 2004 when
14 the contract was being negotiated that you
15 actually thought as a lawyer about this issue
16 of whether my client's tiering right would
17 violate FCC rules. Is that correct?

18 MR. LEVY: Your Honor, as phrased,
19 the question calls for an answer that would be
20 privileged. He actually thought as a lawyer
21 asking him to disclose privileged information.

22 MR. CARROLL: Actually not --

1 JUDGE SIPPEL: He hasn't asked for
2 any information. He's just trying to -- He's
3 just asking him to characterize his role.
4 That's not privileged information.

5 MR. CARROLL: And he's actually
6 answered already the very question I asked.
7 So let me just repeat it again.

8 JUDGE SIPPEL: Objection
9 overruled.

10 MR. CARROLL: Okay.

11 BY MR. CARROLL:

12 Q In 2004, when the contract was
13 being negotiated with my client in which my
14 client had asked for this tiering right, you
15 actually thought back then in 2004 about what
16 that was -- that raised an issue of being an
17 FCC violation, correct?

18 A Did -- I thought about the FCC
19 statutory framework, but I won't say anything
20 beyond that. I did not necessarily think
21 through whether it was an FCC violation or
22 anything of that nature.

1 Q I can hand you your testimony
2 here, but let me see if I can shortcut it. Do
3 you remember being asked a question at your
4 deposition, in this case, pages 129 and 130,
5 my colleague, Mr. Toscano, you remember Mr.
6 Toscano, right?

7 A Yes, I do.

8 Q Remember he asked you a question,
9 "Mr. Hawkins, did you ever consider the issue
10 of whether during the negotiations of the 2004
11 agreements Comcast was violating FCC
12 regulations by seeking the right to telecast
13 Sunday Ticket or the Eight Game Package on a
14 Comcast owned network" and you answered,
15 "Yes." Do you remember that?

16 A Yes.

17 Q Okay. Do you stand by that
18 testimony?

19 A Yes.

20 Q All right.

21 A I'm actually surprised that my
22 counsel allowed me to answer that question,

1 but, yes, I do stand by that testimony.

2 Q And then Mr. Toscano asked you,
3 "And what did you conclude" and your counsel
4 would not let you answer the conclusion,
5 right?

6 A And I believe that you were asking
7 me for my conclusion a moment ago, Mr.
8 Carroll.

9 Q The record will reflect what it
10 does, sir.

11 A Yes.

12 Q I'm not here to argue. It may
13 seem that way.

14 A Yes.

15 Q I just have questions I want to
16 ask.

17 A That's fine.

18 Q And then the next question you
19 were asked, "Did you anticipate litigation at
20 that time" and you answered, this is line 13,
21 "I did. I considered it to be a possibility
22 but not anticipate per se." Do you remember

1 that testimony?

2 A Yes, and, by the way, I think that
3 the "I did" was a hesitation and I stepped
4 back and started. But again you can look at
5 the tape and you can determine that for
6 yourself.

7 Q Would you like to see the words on
8 the page? You're not disputing what I've
9 read.

10 A No, I'm just saying that the "I
11 did" as a statement I think is somewhat
12 misleading because as I recall the answer I
13 started to say "I did" and then I stopped and
14 said, "I considered" whatever I considered.

15 Q Now so putting those two things
16 together, that means in 2004 when you're
17 negotiating this contract with my client you
18 thought about this issue of whether it was an
19 FCC violation and you even thought about and
20 considered it a possibility to be litigation,
21 correct?

22 A I thought about the statutory

1 framework. Beyond that I won't say anything
2 because I think that gets into the substance
3 of my legal analysis at the time.

4 Q I'm just referencing back --

5 A Mr. Carroll, allow me to answer my
6 question and, as I said, I considered
7 litigation to be a possibility but I did not
8 anticipate it as I said in my deposition.

9 MR. CARROLL: I don't want to
10 belabor this because I really have a lot of
11 other things to do. Let me just -- But I have
12 the testimony I can hand off, Your Honor, if
13 you would like to see this.

14 BY MR. CARROLL:

15 Q The question and answer that you
16 were asked before wasn't statutory framework.
17 The question I just read to you that you
18 answered at your deposition was "Did you ever
19 consider the issue of whether during the
20 negotiations of 2004 agreements Comcast was
21 violating FCC regulations by seeking the right
22 to telecast Sunday Ticket or the Eight Game

1 Package on a Comcast owned network" and you
2 said, "Yes." Isn't that right?

3 A Yes.

4 Q Okay.

5 A That's what the transcript
6 reflects.

7 Q So you thought about this issue of
8 Comcast violating FCC laws back in 2004 during
9 the negotiation and you even considered
10 litigation a possibility at that time, right?

11 A I think that's -- I'm not going to
12 -- My transcript says whatever it says. What
13 I'm very concerned about, Mr. Carroll, is I
14 know that you guys like to assert waiver of
15 the privilege. I'm not -- I'm hoping not to
16 get into a situation where Mr. Levy is going
17 to have to object on privilege grounds or face
18 waiver of privilege claims from you.

19 The fact is I consider the FCC
20 statutory framework including whether asking
21 for the tiering right raised FCC issues.
22 Don't want to give any substantive response to

1 the question that might raise privilege issues
2 or constitute a waiver of privilege and I
3 considered litigation a possibility, but I did
4 not anticipate it. That's exactly what the
5 transcript says.

6 JUDGE SIPPEL: Okay. Now see let
7 me ask this question. I don't want to get
8 into this too far, but did you -- So you did
9 formulate. You formulated it in your mind the
10 possibility that there might be some
11 litigation arising out of this as being the
12 provision of the 2004 agreement that we're
13 talking about. In your mind.

14 THE WITNESS: I think that, Your
15 Honor, I think that the way that I would
16 answer that is I considered litigation a
17 possibility because this is a hard-nosed area
18 to say the least in terms of dealings between
19 cable carriers and programming and
20 programmers. But I don't want to give any
21 impression that I was thinking through "Oh,
22 we've got a complaint here" or anything of

1 that nature.

2 JUDGE SIPPEL: All right. Now if
3 that's your testimony that's -- My question is
4 did you communicate that conclusion to
5 anybody.

6 THE WITNESS: To anybody?

7 JUDGE SIPPEL: Yes.

8 THE WITNESS: Internally or?

9 JUDGE SIPPEL: Anybody?

10 THE WITNESS: Internally I'm sure
11 that I discussed the framework of the statute,
12 but I don't think that I ever communicated
13 anything with respect to whether there could
14 be litigation or would be litigation or
15 anything.

16 JUDGE SIPPEL: Strictly stating
17 that didn't go any place else what you said
18 you just testified to.

19 THE WITNESS: Yes.

20 JUDGE SIPPEL: Are you sure of
21 that?

22 THE WITNESS: Yes, I believe that

1 that is true.

2 JUDGE SIPPEL: Okay.

3 THE WITNESS: I can't recall
4 discussing the matter with anyone.

5 BY MR. CARROLL:

6 Q Just one follow-up. I thought
7 what you said to His Honor was you don't
8 remember discussing litigation with anybody.
9 That stayed in your head. But this issue of
10 whether there was an FCC violation you did
11 discuss that with your client back at the
12 time, didn't you?

13 A You're asking me to waive the
14 privilege.

15 Q That's a yes or no.

16 JUDGE SIPPEL: No, he's not. He's
17 just asking you -- He's not asking you to
18 waive a privilege. Just the subject matter of
19 the discussion. You don't have to say what
20 you said.

21 THE WITNESS: Read the question
22 back if you would please.

1 MR. CARROLL: I'll spare the
2 reporter if you wish.

3 THE WITNESS: Or restate it.

4 BY MR. CARROLL:

5 Q Isn't it a fact that you did
6 discuss with your client at the time this
7 issue of whether there was an FCC violation in
8 2004 during the negotiations? Yes or no?

9 A As you stated the question I don't
10 believe so. No.

11 Q You discussed the issue of the
12 structure of the FCC rules as they might apply
13 to the contract with your client, correct?

14 A Yes.

15 Q And here you're distinguishing
16 discussing the structure with discussing the
17 issue of the violation notwithstanding your
18 deposition testimony, correct?

19 MR. LEVY: Objection. It's
20 argumentative.

21 JUDGE SIPPEL: I'll sustain that
22 objection.

1 MR. CARROLL: All right. Your
2 Honor, I have the deposition question answer
3 if you would like to see it. But I'm going to
4 move on.

5 JUDGE SIPPEL: Go ahead. I can
6 read it later.

7 MR. CARROLL: Okay.

8 BY MR. CARROLL:

9 Q Now I'm actually, Mr. Hawkins, let
10 me set you at ease here. I'm not going to
11 argue waiver, at least, not in the proceeding.
12 That's not my objective. Here's my objective.
13 Here's what I want to focus on. Four years
14 later, you're the guy who puts together this
15 FCC case that has us all here today, right?

16 A I wouldn't say that I put it
17 together.

18 Q You signed the declaration with
19 the Complainant's file.

20 A I signed the declaration.

21 Q You talked to your client and gave
22 him advice on bring this case, didn't you?

1 A Gave him advice on bringing this
2 case?

3 Q On whether to bring the case and
4 issues related to this case.

5 A I didn't give them legal advice.
6 I would say that they got that from outside
7 counsel, sir.

8 Q You were part of those discussions
9 in 2008 before this action was filed. Yes or
10 no?

11 A I was part of those discussions
12 absolutely.

13 Q So basically you thought about the
14 issue in 2004 and waited four years to bring
15 this lawsuit alleging that it was a violation,
16 what my client was demanding, correct?

17 A Totally incorrect, sir. The
18 violation alleged here is not the terms of the
19 2004 contract. The violation alleged is
20 discriminatory tiering.

21 Q You've alleged two violations,
22 sir. Do you not remember that?

1 A The retaliation is the second one
2 I believe.

3 Q You've alleged discrimination and
4 you've alleged that it was a violation of FCC
5 rules to demand a financial interest, right?
6 Remember that?

7 A To demand a financial interest,
8 yes.

9 Q Isn't that what my client did in
10 2004? They demanded --

11 A They demanded a personal --

12 Q You have to let me finish. Please
13 do.

14 JUDGE SIPPEL: Wait a minute. The
15 reporter cannot get that.

16 THE WITNESS: Yes. Please do.

17 BY MR. CARROLL:

18 Q In 2004 as part of the
19 negotiations and haven't you testified about
20 this already in your deposition, my client
21 demanded either Sunday Ticket or the Eight
22 Game Package in order to carry the NFL

1 Network? Is that correct? Yes or no?

2 A What they sought and obtained in
3 the negotiation was a right to negotiate for
4 both of those.

5 Q And the right to tier if they
6 didn't get either of them.

7 A That's correct. That's what they
8 sought. They didn't obtain that.

9 Q So you're distinguishing their
10 asking for it in negotiations and you're
11 saying that's not a demand. Is that your
12 position?

13 A I am saying that they asked for it
14 in negotiations and there are a lot of things
15 that are asked for in negotiations that are
16 modified, compromised and give and take. I
17 believe that's what's done. You can call it
18 a demand if you want, but I don't think that
19 that fairly states the negotiation.

20 Q Do you think you offered it
21 without their asking for it in 2004?

22 A I don't know. I was not

1 personally involved in a lot of those
2 negotiations.

3 Q Well, but you've given direct
4 testimony here that says you were directly and
5 indirectly involved and you carry on for
6 paragraph after paragraph about the 2004
7 negotiations.

8 A Yes.

9 Q So let me ask you, sir. Are you
10 now saying that you were not enough involved
11 to answer the question as to whether this
12 notion of my client getting access to Sunday
13 Ticket or Eight Game in exchange for carrying
14 network you don't know whether your client
15 offered it in the first instance or my client
16 asked for it? Is that your position?

17 A I don't know for sure. I think
18 that what was clearly offered by the NFL was
19 a seat at the table for Sunday Ticket
20 negotiations and later for Eight Game Package
21 negotiations.

22 Q So do you think your client

1 offered it or do you think my client asked for
2 it or demanded it? Which is it?

3 A Probably both. I think that your
4 client wanted it. My client was prepared to
5 engage in discussions on those terms.

6 Q And you agreed to it, didn't you?

7 A The seat at the table, yes.

8 Q You agreed to the terms of the '04
9 contract that required --

10 A Did I or did my client? My client
11 did.

12 Q Didn't you sign off on the
13 contract?

14 A Did I sign off on the contract?
15 No.

16 Q You didn't have discussions with
17 Mr. Tagliabue back in 2004 where he asked you
18 what you thought about the contract and you
19 reviewed it and signed off on it. You didn't
20 do that?

21 A Not on the final version I don't
22 believe. I've had a variety of discussions

1 with Mr. Tagliabue about the contract.

2 Q The deal terms that we're speaking
3 of, you signed off on these deal terms, didn't
4 you?

5 MR. LEVY: The issue here may be
6 the phrase "sign off."

7 THE WITNESS: Yes.

8 MR. LEVY: Object to the question
9 on the ground that it's vague.

10 JUDGE SIPPEL: Yes. The term,
11 unless he defines, unless he's accepting your
12 definition of what you mean by "sign off."

13 BY MR. CARROLL:

14 Q You said you were okay with it.

15 A I said that I was okay with it?
16 In what sense?

17 Q In any sense you want, sir.
18 Didn't people -- Let me put a clean question.

19 A Yes. Please do.

20 Q You knew about the proposed
21 exchange with my client in 2004. Did you
22 think it was mutual on both sides, this

1 exchange of access to Eight Game Package or
2 Sunday Ticket for carrying the NFL Network?
3 You knew about that and you were okay with it
4 and you communicated the fact you were okay.
5 Is that correct?

6 A No, because of the way you stated
7 your questions, Mr. Carroll. You said the
8 exchange of access to Sunday Ticket. I was
9 perfectly fine with setting up a negotiation
10 framework. I wasn't -- I don't think I was
11 ever confronted with a question of "Are you
12 okay with promising them Sunday Ticket?"

13 Q No, no. You were okay, weren't
14 you, with promising that if they didn't get
15 Sunday Ticket or the Eight Games they could
16 tier? You were okay with that, weren't you?

17 A I would say that I was okay with
18 the concept that if there weren't privity of
19 contract, a direct contractual relationship
20 between an NFL company and a Comcast company.
21 That could be Comcast Programming Sub, Comcast
22 Cable Carriage Sub, NFL Enterprises, the NFL

1 itself. With respect to either a Sunday
2 Ticket package, maybe not the full one but an
3 out-of-market package or telecast of a newly
4 created cable package by one of those Comcast
5 companies, if there weren't a privity
6 relationship then, yes, they could tier.

7 MR. CARROLL: Your Honor, I'm
8 going to mark a few documents. What time do
9 you wish to take your morning break because I
10 don't want to do it in the middle of a
11 document?

12 JUDGE SIPPEL: Well, it's 11:00
13 a.m. We've been here since 9:30 a.m. How
14 long do you think this witness is going to be
15 on the stand? Do you have --

16 MR. CARROLL: I'm going to be with
17 this witness another hour or two.

18 JUDGE SIPPEL: Past dinner? Past
19 lunch rather, I'm sorry.

20 MR. CARROLL: Past lunch. Not
21 dinner.

22 (Laughter.)

1 JUDGE SIPPEL: Past lunch. Well, I
2 don't know how people feel. But if you're set
3 to keep going why don't we go for another hour
4 and then break for lunch. How does that
5 sound?

6 MR. CARROLL: I'm fine with that.

7 THE WITNESS: That's okay with me.

8 JUDGE SIPPEL: Does anybody have a
9 problem with that? If anybody needs to leave
10 for anything you can go in and out if you want
11 to.

12 Now let me ask you a question here
13 too. Mr. Levy, I'm not hearing much
14 confidential or super confidential evidence
15 here.

16 MR. LEVY: Well, I'm assuming that
17 Mr. Carroll's examination is going to focus on
18 Mr. Hawkins' direct testimony rather than all
19 this collateral stuff. But you can put the
20 question to Mr. Carroll because at this point
21 he's controlling the examination.

22 MR. CARROLL: Your Honor, the

1 direct statement has been designated highly
2 confidential.

3 JUDGE SIPPEL: Yes.

4 MR. CARROLL: Frankly, all this
5 information is going to be his information.
6 So I really don't care about the
7 confidentiality of it. I'm respecting my
8 friends on the other side. I am about to mark
9 documents.

10 JUDGE SIPPEL: All right. On the
11 side of collection let's keep it the way it
12 is.

13 BY MR. CARROLL:

14 Q Let me just see if we can finish
15 this area of asking this. Over your years as
16 practicing as a lawyer, did you practice in
17 the FCC area to study the FCC rules and give
18 advice in that area?

19 A I did when I was at Covington,
20 yes.

21 Q Okay. And do you know what the
22 statute of limitations is under the FCC rules

1 for this claim that you brought here today?

2 MR. LEVY: Your Honor, I think
3 this is outside the scope of the direct.

4 JUDGE SIPPEL: No, this is cross
5 examination. He's laid a foundation for this.

6 MR. LEVY: Okay.

7 JUDGE SIPPEL: I'll have judgment
8 on this.

9 BY MR. CARROLL:

10 Q One year.

11 A One year from the occurrence of
12 the event of which you're complaining which
13 was tiering.

14 Q And just to finish this, you
15 thought about the tiering issue and its
16 possible illegality in 2004 and waited four
17 years before bringing this lawsuit.

18 MR. LEVY: Objection.
19 Argumentative.

20 THE WITNESS: Mr. Carroll.

21 JUDGE SIPPEL: Excuse me. I'm
22 going to overrule the objection.

1 THE WITNESS: Mr. Carroll, I told
2 you that in 2004 when negotiating a contract
3 with a vertically integrated cable company
4 among other things that I thought of was the
5 FCC statutory framework. That doesn't mean
6 that I thought (a) we had a claim, (b) we
7 should bring a claim, (c) that there was any
8 possibility of litigation or any anticipation
9 of litigation. I thought about the statutory
10 framework.

11 BY MR. CARROLL:

12 Q And you've answered this before.
13 You thought about the possibility of
14 litigation and there's only one more question.
15 The possibility you thought of was not that my
16 client would sue. It was that you would sue
17 my client, wasn't it?

18 A I can't answer that without
19 disclosing privileged matters I don't think.

20 Q And I don't think that's --

21 JUDGE SIPPEL: You certainly can
22 discuss what's in your mind. You can

1 communicate that.

2 THE WITNESS: That I think is work
3 product. I mean I'll defer to my counsel on
4 this in terms of whether to make an objection
5 and obviously you, Your Honor, can rule
6 however you want on that objection, but I
7 don't want to get into inadvertently waiving
8 privilege just by talking too quickly.

9 MR. LEVY: We have an
10 understanding that no one's going to claim a
11 waiver.

12 JUDGE SIPPEL: That's not going to
13 happen.

14 MR. LEVY: In this case or in the
15 New York case.

16 JUDGE SIPPEL: -- forever and
17 forever. But the question is this is not a
18 waiver type question. There is no waiver
19 here. We want to know -- I'm trying to find
20 out. I'm interested in knowing what was
21 inside his mind and I think that was a
22 perfectly legitimate question. Who is going